

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

LEONARD A. SZPLETT,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:19-cv-02500
)	
KENCO LOGISTIC SERVICES, LLC, a)	Judge Gary Feinerman
Tennessee Limited Liability Company, Mars,)	Magistrate Judge Young B. Kim
Inc., The Hartford, DAVID JABALEY, MARIO)	
LOPEZ, TAMMI FOWLER, PAULA HISE,)	
TRACE SPIER, ROBERT COFFEY, TODD)	
MOORE, JAY ELLIOT. DAVID CAINES,)	
MICHAEL MANZELLO, DAVID CRAWLEY,)	
and KELVIN WALSH,)	
)	
Defendants.)	

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT
PURSUANT TO FED. R. CIV. PRO. 12(b)(6)**

DEFENDANTS, Kenco Logistic Services, LLC, Kelvin Walsh, Paula Hise, Tammi Fowler, David Jabaley, Mike Manzello, David Caines, Trace Spier, Jay Elliott and Dwight Crawley (collectively "the Kenco Defendants") by and through their undersigned Counsel, move to dismiss Plaintiff Leonard Szplett's Amended Complaint, with prejudice, and in support thereof, state as follows:

1. Kenco employed Leonard Szplett as an office manager at the Manteno, Illinois Mars warehouse until his termination on March 29, 2015. Szplett was terminated when Kenco lost its contract at the warehouse, and all employees at his location were terminated.

2. More than four year after his termination, Szplett brings employment discrimination claims against the Kenco Defendants pursuant to 42 U.S.C. §1981.

3. Taking Szplett's allegations as true for purposes of a Motion to Dismiss, any such claims are time-barred and should be dismissed with prejudice because the four-year statute of limitations applies and therefore, the claims are untimely. 28 U.S.C. §1658.

4. Szplett additionally asserts claims surrounding statements made by the Kenco Defendants in connection with responding to other EEOC charges or lawsuits; any statements made in judicial or quasi-judicial proceedings are subject to immunity and cannot form the basis of a cause of action.

5. In accordance with Fed. R. Civ. Pro. 12(b)(6) the Court should dismiss a complaint where the factual allegations do not state a plausible claim for relief. The running of the statute of limitations is an affirmative defense and may be raised on a 12(b)(6) motion to dismiss.

6. Additionally, Szplett's Amended Complaint is largely incoherent and grossly violates the short, plain statement requirements of Fed. R. Civ. Pro. 8(a). To the extent that any portions are not dismissed with prejudice, they should be dismissed without prejudice for that reason.

7. The Kenco Defendants reference and incorporate all arguments contained in their Memorandum in Support of their Motion to Dismiss as though fully set forth herein.

WHEREFORE, for all the reasons stated herein, and in Defendants accompanying memorandum of law, DEFENDANTS, Kenco Logistic Services, LLC, Kelvin Walsh, Paula Hise, Tammi Fowler, David Jabaley, Mike Manzello, David Caines, Trace Spier, Jay Elliott and Dwight Crawley request that the Court dismiss Szplett's Amended Complaint with prejudice in accordance with Fed. R. Civ. Pro. 12(b)(6) and grant such additional relief as the Court deems proper.

Dated: July 8, 2019

Respectfully submitted,

**KENCO LOGISTIC SERVICES, LLC,
KELVIN WALSH, MIKE MANZELLO,
DAVID JABALEY, TAMMI FOWLER,
PAULA HISE, TRACE SPIER, DAVID
CAINES, DWIGHT CRAWLEY AND
JAY ELLIOTT**

By: /s/ Jody Wilner Moran
One of Their Attorneys

Jody Wilner Moran
Julia P. Argentieri
Jackson Lewis P.C.
150 North Michigan Avenue
Suite 2500
Chicago, Illinois 60601
Telephone: (312) 787-4949
Facsimile: (312) 787-4995
moranj@jacksonlewis.com
julia.argentieri@jacksonlewis.com

CERTIFICATE OF SERVICE

I, Julia P. Argentieri, an attorney, hereby certify that on July 8, 2019, I electronically filed a copy of the foregoing **DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. PRO. 8 AND 12(b)(6)** with the Clerk of the Court using the CM/ECF system. I further certify that a copy of the foregoing has been mail and email to the following non-ECF participant:

Leonard Szplett
3421 W. 1500 NW Road
Kankakee, IL 60901
Stkbnd2000@aol.com

By: /s/ Julia P. Argentieri
One of the Attorneys for the Defendants